

FILED

2017 FEB -8 AM 10: 16

IN THE CIRCUIT COURT OF YELL COUNTY, ARKANSAS
CIVIL DIVISION
DANVILLE DISTRICT/DIVISION 2

SHARON BARNETT
CIRCUIT & COUNTY CLERK
YELL CO. ARKANSAS DIST.

Jahley

MARTHA G. WEST

PLAINTIFF

v.

75SCV-17-2

SEARS, ROEBUCK AND CO.

DEFENDANT

ANSWER OF SEARS, ROEBUCK AND CO.

Comes now Sears, Roebuck and Co., ("Sears"), and for its Answer to the Complaint filed by the Plaintiff, Martha G. West, ("West" or "Plaintiff") in the captioned cause, and states:

PARTIES AND JURISDICTION

1. Sears is without sufficient information or knowledge as to the truth or accuracy of the allegations contained within Paragraph one (1) of the Complaint, therefore Sears denies same.
2. Sears admits that it is registered with the Arkansas Secretary of State and authorized to conduct business in the State of Arkansas. Sears denies the remaining allegations of Paragraph two (2) of the Complaint.
3. Sears is without sufficient information or knowledge as to the truth or accuracy of the allegations contained within Paragraph three (3) of the Complaint, therefore Sears denies same.
4. Sears denies the allegations in Paragraph four (4) of the Complaint.

5. Sears denies the allegations contained within Paragraph five (5) of the Complaint.

RESPONSE TO "FACTS"

6. Sears reaffirms and realleges each and every responsive statement contained within paragraphs 1-5 hereinabove as if set forth herein and pled word-for-word. To the extent that Paragraph six (6) requires a response, Sears denies the allegations contained therein.

7. Sears is without sufficient information or knowledge as to the truth or accuracy of the allegations contained within Paragraph seven (7) of the Complaint, therefore Sears denies same.

8. Sears is without sufficient information or knowledge as to the truth or accuracy of the allegations contained within Paragraph eight (8) of the Complaint, therefore Sears denies same.

9. To the extent that Paragraph nine (9) requires a response from a non-attorney, Sears operates its business and business locations within the letter of the law as it applies to all individuals and businesses having dealings therewith. Sears denies the remaining allegations contained within paragraph nine (9) of the Complaint.

10. Sears denies the allegations contained in Paragraph ten (10) of the Complaint.

11. Sears denies the allegations contained in Paragraph eleven (11) of the Complaint.

12. Sears denies the allegations contained in Paragraph twelve (12) of the Complaint.

13. Sears is without sufficient information or knowledge as to the truth or accuracy of the allegations contained within Paragraph thirteen (13) of the Complaint, therefore Sears denies same.

14. Sears is without sufficient information or knowledge as to the truth or accuracy of the allegations contained within Paragraph fourteen (14) of the Complaint, therefore Sears denies same.

RESPONSE TO "COUNT I. NEGLIGENCE"

15. Sears reaffirms and realleges each and every responsive statement contained within paragraphs 1-14 hereinabove as if set forth herein and pled word-for-word. To the extent that Paragraph fourteen (14) requires response, Sears denies the allegations contained therein.

16. To the extent that Paragraph sixteen (16) requires a response from a non-attorney, Sears operates its business and business locations within the letter of the law as it applies to all individuals and businesses having dealings therewith. Sears denies the remaining allegations contained within paragraph sixteen (16) of the Complaint.

17. To the extent that Paragraph seventeen (17) requires a response from a non-attorney, Sears operates its business and business locations within the letter of the law as it applies to all individuals and businesses having dealings therewith. Sears denies the remaining allegations contained within paragraph seventeen (17) of the Complaint.

18. To the extent that Paragraph eighteen (18) requires a response from a non-attorney, Sears operates its business and business locations within the letter of the law as it applies to all individuals and businesses having dealings therewith. Sears denies the remaining allegations contained within paragraph eighteen (18) of the Complaint.

19. To the extent that Paragraph nineteen (19) requires a response from a non-attorney, Sears operates its business and business locations within the letter of the law as it

applies to all individuals and businesses having dealings therewith. Sears denies the remaining allegations contained within paragraph nineteen (19) of the Complaint.

20. Sears denies the allegations in Paragraph twenty (20) of the Complaint.
21. Sears denies the allegations in Paragraph twenty-one (21) of the Complaint.
22. Sears denies the allegations in Paragraph twenty-two (22) of the Complaint.
23. Sears denies the allegations in Paragraph twenty-three (23) of the Complaint.

RESPONSE TO "COUNT II. RES IPSA LOQUITUR."

24. Sears reaffirms and realleges each and every responsive statement contained within paragraphs 1-23 hereinabove as if set forth herein and pled word-for-word. To the extent that Paragraph twenty-four (24) requires response, Sears denies the allegations contained therein.
25. Sears denies the allegations in Paragraph twenty-five (25) of the Complaint.
26. Sears denies the allegations in Paragraph twenty-six (26) of the Complaint.
27. Sears denies the allegations in Paragraph twenty-seven (27) of the Complaint.

RESPONSE TO "PRAYER FOR RELIEF"

28. Sears reaffirms and realleges each and every responsive statement contained within paragraphs 1-27 hereinabove as if set forth herein and pled word-for-word. To the extent that Paragraph twenty-eight (28) requires response, Sears denies the allegations contained therein.
29. Sears denies the allegations in Paragraph twenty-nine (29) of the Complaint, including subparts a through d inclusive.
30. Sears denies the allegations in Paragraph thirty (30) of the Complaint.

31. Sears denies the allegations in Paragraph thirty-one (31) of the Complaint.

32. All of the allegations of the Complaint not specifically admitted to herein are denied.

33. The Complaint fails to state a cause of action against Sears upon which relief can be granted; there is a lack of jurisdiction over Sears; there is lack of subject matter jurisdiction; there is insufficiency of service of process; there is insufficiency of process; and there is failure to join a necessary party under Rule 19 of the Arkansas Rules of Civil Procedure ("ARCVp").

34. Sears asserts all applicable defenses pursuant to Rule 8, ARCVp, and all other matters constituting avoidance or an affirmative defense if warranted by the facts developed through discovery.

35. Sears specifically alleges that Plaintiff has failed to take proper action to mitigate damage and loss alleged to have occurred.

36. Sears reserves the right to amend its Answer, file a Motion to Dismiss, a Motion for Summary Judgment, a counter-claim, cross-claim or include third parties in this litigation if warranted after discovery.

37. Sears specifically alleges contributory and comparative negligence on the part of Plaintiff and/or others. Plaintiff failed to act as an ordinary or prudent person under the circumstances existing at the time she was allegedly damaged and failed to take preventative, mitigating and/or proper action under the circumstances.

38. Sears states that upon information, reason and belief, that if it were found to have committed some act or failed to act concerning matters alleged in the Complaint, and such matters were determined to constitute fault or default on its part, which is denied, then the

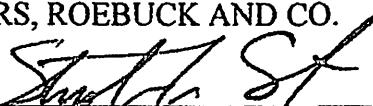
actions of the Plaintiff constitute superseding, intervening causes, of the alleged fault or default of this Defendant.

39. Sears upon information, reason and belief, affirmatively alleges that if Plaintiff was damaged in the manner and by the method alleged in the Complaint, which is denied, then in that event, such damages were the sole and proximate result or fault on the part of the Plaintiff or others over which Sears has no control and for which Sears is not responsible nor liable.

40. Sears specifically alleges that the Complaint fails to comply with Rule 10(d), ARCVp. Specifically, Sears asserts that there are no exhibits to Plaintiff's Complaint and thus the allegations are wholly unsupported and unsupportable as made within the Complaint.

WHEREFORE, PREMISES CONSIDERED, Sears, Roebuck and Co., prays that the Complaint of the Plaintiff be dismissed, for its costs and attorney's fees associated with the defense of this matter; and that it have any and all other relief as to which the Court may find it entitled.

RESPECTFULLY SUBMITTED,
SEARS, ROEBUCK AND CO.

By: 

Stephen C. Smith, ABA #2003014
SMITH, COHEN & HORAN, PLC
P.O. Box 10205
Fort Smith, AR 72917-0205
Telephone: (479) 782-1001
Facsimile: (479) 782-1279

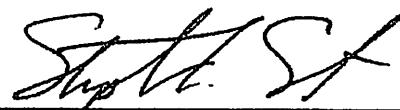
CERTIFICATE OF SERVICE

I, Stephen C. Smith, do hereby certify that a true and correct copy of the foregoing instrument was served this 6th day of February, 2017, by:

First Class Mail Hand Delivered Facsimile E-mail

To the following person(s):

John R. Peel
Peel Law Firm
120 South Greenwood
P.O. Box 986
Russellville, AR 72811



Stephen C. Smith